

ceivable that such confusion would result at a fire as to cost the township great loss of property and human life.

I am, therefore, of the opinion that the power granted the trustees by Section 3298-54, General Code, "to establish all necessary regulations against the occurrence of fires" includes the authority for the trustees to make a reasonable fee as compensation for the attendance of the volunteer firemen at practice meetings of the township volunteer fire department.

Of course, it is a well established rule of law that the discretion of a public board must not be abused. What constitutes abuse of discretion is largely a question of fact arising from the circumstances of each particular case. Hence, I am not passing on the exact amount of money that the trustees may allow each volunteer fireman for a practice meeting and the number of practice meetings to be held in each year. These matters are within the discretion of the township trustees and so long as such discretion is not abused the courts will not be disposed to set aside the action of the said trustees.

Respectfully,

JOHN W. BRICKER,

Attorney General.

2320.

BANKS—BOARDS OF EDUCATION AND TOWNSHIP TRUSTEES UN-AUTHORIZED TO COMPROMISE CLAIMS WITH CLOSED DEPOSITORY BANKS AND WITH SURETIES ON DEFAULTED DEPOSITORY BONDS WHEN.

SYLLABUS:

1. *Where a surety bond constitutes the security for the deposit of public funds, boards of education and boards of township trustees may not, on behalf of school districts or townships, consent to the resumption of business by a closed depository bank under a plan whereby the public depositors are to relinquish a portion of the deposit liability and accept in lieu thereof participation certificates issued against certain segregated assets.*

2. *Such boards do not have the power to compromise claims due their respective subdivisions similar to that granted to boards of county commissioners by Section 2416, General Code, and cannot effect a compromise with sureties on a defaulted depository bond after bringing action against such sureties or otherwise. Opinions of the Attorney General for 1933, No. 1890, approved and followed.*

3. *By virtue of the powers of local self-government conferred upon municipalities by Article XVIII, Section 3, Ohio Constitution, the council or other legislative body of a municipality may consent to the resumption of business by a closed municipal depository under a plan whereby the debtor is discharged from its obligation to the extent of 50% of the debt.*

COLUMBUS, OHIO, February 27, 1934.

HON. EDWIN S. DIEHL, *Prosecuting Attorney, Defiance, Ohio.*

DEAR SIR:—I have your letter of recent date, which reads as follows:

"Plans are being perfected for the creation of a new State Bank in the Village of Sherwood, to take over selected assets of the Sherwood

Savings Bank Company, Unincorporated, and to assume the general deposits, including deposits of townships, boards of education, and the village of Sherwood, to the extent of 50% thereof. Substantially all of the depositors have agreed to this, including the Village Council and the respective boards, but the question now arises as to whether or not they have authority to enter into any agreement for the release of deposits, and for the release of bondsmen upon the depository bond.

The plan contemplates the creation of a trust fund consisting of the unaccepted assets of the Sherwood Savings Bank Company, Unincorporated, to be operated by Trustees for the benefit of the depositors, to the extent of their deposits not assumed by the new bank. In a general way, it is the plan being used by many banks in other localities.

The public funds in each instance were secured by bonds signed by the three partners owning the unincorporated bank. The plan contemplates that these partners shall put into the new bank, which assumes 50% of the old bank's deposits, more than 50% of the money required for the capital stock of the new bank. The capital stock of the new bank is to be \$35,000 and the owners are to invest \$18,000 and receive for it stock in the new bank.

The question now arises as to how this can be accomplished by the Boards of Education and Township Trustees, so as to comply with the law, and thereby relieve them from personal and individual responsibility. Will you be kind enough to give me your opinion as to whether or not it lies within the discretion of the respective boards to consent to the plan and waive their right to 50% of the deposits to be trusted, and also to release the owners as sureties upon the bonds. If not, would it be possible for them to go into court and either bring suit upon the bonds, and then compromise the actions, or have the court make such an order as would accomplish the purpose in the conservatorship proceedings."

Your questions concern the right of a board of township trustees, board of education and village council to compromise a claim against a bank which has defaulted in its contract covering the deposit of public funds of the respective political subdivisions governed by them. It appears from your letter that all depositors who consent to the proposed plan agree that the resuming bank shall be liable for 50% of their deposits and consent to accept, in lieu of the other 50%, certificates of participation in certain charged out assets to be liquidated for their benefit by trustees. In determining whether the governing bodies in question can legally consent to such a plan, providing for the discharge of the debtor to the extent of 50% of the debt, it is necessary to bear in mind that public officers and boards possess only those powers conferred by statute. *Peter vs. Parkinson*, 83 O. S. 36; *State ex rel. vs. Pierce*, 98 O. S., 44.

Public funds can be legally deposited in a bank only when authorized by statute. *Fidelity & Casualty Company vs. Bank*, 119 O. S., 124. Under various depository statutes of this state, a contract is entered into for a definite period, security of specified classes is pledged, and the funds are withdrawable on demand. See Sections 7604, et seq., school funds; Sections 4295, et seq., municipal funds; Sections 3320, et seq., township funds. When a bank is closed for liquidation after demand by the public depositor for the return for its funds, the breach of the depository contract is complete and the depositor becomes entitled to resort to its security. Thereafter the subdivision can create a new depository only in the manner prescribed by the applicable statutes.

Since a surety bond rather than pledged collateral constitutes the security for the deposits in question, it is unnecessary for me to consider Section 2293-38, General Code (115 O. L., 611). That section permits a subdivision to exchange securities pledged by a depository which has defaulted in its contract for other securities.

In a former opinion of this office, reported in Opinions of the Attorney General, 1931, Vol 1, page 579, it was held, as disclosed by the syllabus:

“Under proper circumstances, county commissioners have authority under section 2416 of the General Code, to enter into a compromise of claims due the county for money deposited in a county depository, which depository is in course of liquidation.”

The situation then before my predecessor was that a closed depository proposed to assign most of its assets and liabilities to another bank, which was to pay \$78,000 of the county deposit in cash. The question was, whether the county commissioners could agree to release the bank from paying the remaining \$100,000 and accept the obligation of a holding company which acquired the non-liquid assets, such obligation to be secured by a lien upon those assets and also by a bond.

While under the holding in that opinion a board of county commissioners might consent to the plan in question, it is clear that the former opinion was based upon Section 2416 of the General Code, which has no application to the subdivisions in question. Section 2416 provides that a board of county commissioners “may compound or release, in whole or in part, a debt * * * due the county, and for the use thereof * * *.” The deposit of county funds under Sections 2715, et seq., General Code, creates a debt. *State vs. Executor of Buttles*, 3 O. S. 309; *Fidelity and Casualty Co. vs. Bank*, supra; *In re Liquidation of Osborn Bank*, 1 O. A., 140. Thus Section 2416, General Code, applied to the situation in question.

In another opinion of this office, reported in Opinions of the Attorney General for 1931, Vol. 2, p. 1245, it was held, as appears from the second branch of the syllabus:

“When the deposits in a county depository bank, made by a county treasurer of funds in his possession, consist of undivided tax moneys which upon proper settlement by the county treasurer would become due to the state, county and other taxing subdivisions, the county commissioners of the county are without authority to compromise or release in whole or in part, the obligation of the bank and its bondsmen to repay, or account for, any portion of the said funds, except that portion which upon settlement of the county treasurer would be due to the county.”

In the course of the opinion the following language appears at page 1247:

“The powers of the county commissioners are limited strictly to those extended to them by statute, and statutes extending power to cancel a debt owing to the public, should, in my opinion, be strictly construed and not extended beyond their clear and plain import as expressed by the language used in granting the power. *State ex rel. Locher vs. Menning et al.*, 95 O. S. 97; *State ex rel. vs. Pierce*, 96 O. S. 44; Lewis Sutherland on Statutory Construction, 2nd Ed. Sections 542 and 632.”

Since Section 2416, General Code, must be strictly construed, it follows that

in the absence of such a provision the county commissioners would be without authority to compromise a debt created by a depository contract. I so held in Opinion No. 1890, rendered November 20, 1933. I know of no provision of statute analogous to Section 2416, General Code, which applies to township trustees or boards of education. It follows that neither of such bodies can compromise a debt. Thus neither can legally consent to the proposed plan to reopen the depository, nor can they compromise a cause of action against the sureties upon the depository bonds.

There is an important distinction between townships and school districts on the one hand and municipal corporations on the other. The following statement appears in 1 McQuillin Municipal Corporations, pp. 356-366 :

"The characteristic feature of a municipal corporation beyond all others is the power and right of local self-government. The conditions of congested urban communities require broad delegation of administrative authority, since the greater part of their functions are purely local, and the governmental problems of such communities are peculiar to the locality, and, in the main, concern only the inhabitants thereof, as distinguished from the people of the state at large. Therefore, these communities are constituted almost autonomous corporations, with designated privileges and powers, in order to provide protection and to supply the needs, conveniences and comforts of the inhabitants."

(Citing *Board of Commissioners vs. Mighels*, 7 O. S. 109, 119.)

While boards of education and boards of trustees are by statute bodies politic (Sections 4749 and 3244, General Code), nevertheless they are more properly classified as quasi corporations than as corporations. Opinion 1890, *supra*. A quasi corporation is a creature of the legislature, having only the power to act as an entity within the scope of the powers granted. 1 McQuillin, Municipal Corporations, Section 135. They are not "autonomous corporations" in any sense.

Article XVIII, Section 3, Ohio Constitution, reads:

"Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws."

Since the adoption of Article XVIII, the powers of municipalities are derived from the people through the Constitution and not through the legislature. *Fitzgerald vs. Cleveland*, 88 O. S., 338.

In Opinion No. 1890, *supra*, the following language appears:

"In Opinions of the Attorney General for 1930, Vol. 1, page 543, my predecessor in office held that a municipal corporation had the authority to compromise and settle claims against a municipality. Such opinion might well be sustained by reason of the provisions of the Constitution and statutes of Ohio granting to municipalities powers of 'home rule.'"

In my opinion the power to compromise a claim in favor of a municipality is a power of local self-government conferred by Article XVIII, Section 3, *supra*.

In the light of the foregoing, it is my opinion that:

1. Where a surety bond constitutes the security for the deposit of public funds, boards of education and boards of township trustees may not, on behalf of school districts or townships, consent to the resumption of business by a closed depository bank under a plan whereby the public depositors are to relinquish a portion of the deposit liability and accept in lieu thereof participation certificates issued against certain segregated assets.

2. Such boards do not have the power to compromise claims due their respective subdivisions similar to that granted to boards of county commissioners by Section 2416, General Code, and cannot effect a compromise with sureties on a defaulted depository bond after bringing action against such sureties or otherwise. Opinions of the Attorney General for 1933, No. 1890, approved and followed.

3. By virtue of the powers of local self-government conferred upon municipalities by Article XVIII, Section 3, Ohio Constitution, the council or other legislative body of a municipality may consent to the resumption of business by a closed municipal depository under a plan whereby the debtor is discharged from its obligation to the extent of 50% of the debt.

Respectfully,

JOHN W. BRICKER,

Attorney General.

2321.

APPROVAL, NOTES OF CLEVELAND CITY SCHOOL DISTRICT, CUYA-HOGA COUNTY, OHIO—\$800,000.00.

COLUMBUS, OHIO, February 27, 1934.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

2322.

APPROVAL, NOTES OF WASHINGTON RURAL SCHOOL DISTRICT, JACKSON COUNTY, OHIO—\$1,440.00.

COLUMBUS, OHIO, February 27, 1934.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

2323.

APPROVAL, BONDS OF MADISON RURAL SCHOOL DISTRICT, LAKE COUNTY, OHIO—\$7,400.00.

COLUMBUS, OHIO, February 27, 1934.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.